U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: [illegible]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a hurricane shutter installation company. It seeks to employ the beneficiary permanently in the United States as an installer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director noted multiple discrepancies in the evidence submitted and determined that the evidence did not establish clearly that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

On appeal, the petitioner submits a letter from the petitioner's owner and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). Here, the Form ETA 750 was accepted for processing on April 24, 2001. The proffered wage as stated on the Form ETA 750 is $15 per hour, which equals $31,200 per year.

Part B of the Form ETA 750 requests that the beneficiary list all of his employers during the three years previous to the date that form was filed. The form lists three shutter installation companies for whom the beneficiary had worked. The beneficiary allegedly worked for a company in Fort Lauderdale, Florida from July 1998 to January 2000, a company in Medley, Florida from January 2000 through April 2000, and a company in Hallandale, Florida from April 2000 through March 2001. That form does not state that the beneficiary worked for the petitioner.

With the petition, counsel submitted three 1099 miscellaneous income forms purporting to show amounts the petitioner paid to the beneficiary during 2001. Those three forms show that the petitioner paid the beneficiary $10,500, $11,908.66, and/or $2,295.91 during that year. All three forms show that the petitioner's Federal

taxpayer identification number is 01-0577931. The petitioner also submitted its 2001 Form 1120 U.S. Corporation Income Tax Return, which shows the same taxpayer identification number. The petition, however, states that the petitioner's taxpayer identification number is 65-0997838.

The petitioner's purported 2001 Form 1120 U.S. Corporation Income Tax Return shows that the petitioner declared a loss of $3,682 as its taxable income before net operating loss deduction and special deductions during that year. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of $3,963 and no current liabilities, which yields net current assets of $3,963.

On April 19, 2003, the Texas Service Center requested additional evidence. The Service Center requested to know why the petitioner issued three Forms 1099 to the beneficiary during 2001 rather than one. The Service Center also specifically requested a copy of the petitioner's 2002 income tax return, its last three months of bank statements, and its last Federal Quarterly Tax Return. The petitioner was accorded 12 weeks to respond to that request. Counsel responded with a letter, dated July 7, 2003, requesting an extension of one month to respond to the request for evidence.

On July 15, 2003, the Director, Texas Service Center, issued a decision in this matter. The director noted that no extensions may be granted for responses to requests for evidence.[1] The director further noted that the only three responses permitted were (1) to submit the requested evidence, (2) to submit some or none of the requested evidence and request a decision, or (3) to withdraw the petition.[2] The director stated that, therefore, counsel's letter would be considered a request for a decision based on the evidence of record.[3]

The director observed that, although the petitioner provided the three Forms 1099 showing payments to the beneficiary during 2001, and the petitioner is shown on the G-325A Biographic Information form, submitted in connection with a concurrently filed application to adjust to lawful permanent resident status based upon the instant visa petition, as having employed the beneficiary from November 2000 through October 2002, the petitioner is not shown on the Form ETA 750, Part B as having employed the beneficiary during that year. The director further observed that another employer shown on the Form G-325A was not listed on the Form ETA 750, Part B. Further still, the director noted that no documentation of the beneficiary's alleged experience had been submitted.[4]

The director noted that the petitioner's treasurer, whose signature appears on the I-140 petition and the Form ETA 750, did not sign the petitioner's 2001 income tax return. The director asserted that the signature on the tax return is very similar to that of the beneficiary, as seen on the Form ETA 750, Part B. The director noted that although the petition states that the petitioner has two employees, its 2001 tax return indicates that it paid no compensation to officers and no salaries. The director also noted that, if the beneficiary were an employee

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[1] See 8 C.F.R. § 103.2(b)(8).

[2] Again, see 8 C.F.R. § 103.2(b)(8).

[3] Because no extensions are allowed, and no substantive response was filed, the director could, pursuant to 8 C.F.R. § 103.2(b)(13), have determined that the case was abandoned. Alternatively, the director could have observed that the petitioner failed to submit evidence that precluded a material line of inquiry, and denied the petition pursuant to 8 C.F.R. § 103.2(b)(14).

[4] Item 14 of the Form ETA 750, Part B stated, "Letter of experience will be submitted upon request."

of the petitioner, then he and the treasurer would apparently be the two employees referred to by the petition. Finally, the director noted that the taxpayer identification number given on the 1099 forms and the 2001 tax return is not the same as the taxpayer identification number given on the Form I-140 petition.

The director noted that the evidence was submitted under the penalty of perjury as true and correct, and found that "the many contradictions and inconsistencies in the evidence provided show one or more of the documents submitted . . . to be incorrect." Because the veracity of the supporting documents had been impeached, the director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date and denied the petition.[5]

On appeal, counsel submits a letter, dated July 3, 2003, from the petitioner's owner. The owner explained that the petitioner had previously utilized the beneficiary as a contractor, but would hire him as an employee upon approval of the petition. The owner stated that payments to the beneficiary had been included on the 2001 tax return under "Other Deductions," and that the petitioner had paid the beneficiary $24,704.57, the total of the amounts shown on all three 1099 forms. The owner explained that the reason three 1099 forms were issued to the beneficiary is that the petitioner's accountant twice realized that he had issued 1099 forms showing an insufficient amount.

The owner also explained that, because the petitioner has no employees, it does not file a Federal Quarterly Tax Return. The owner further explained that the petitioner was not listed as the beneficiary's employer on the Form ETA 750, Part B because he was working sporadically for several different companies. Although the owner acknowledged that the work the beneficiary performed for the petitioner was not listed on the Form ETA 750, Part B, as the form explicitly requires[6], he characterized that omission as irrelevant.

With the appeal, counsel submitted a copy of its 2002 Form 1120 U.S. Corporation Income Tax Return. The return shows that the petitioner declared a loss of $36,379 as its taxable income before net operating loss deduction and special deductions during that year. The corresponding Schedule L shows that at the end of that year the petitioner had current assets of $1,785 and no current liabilities, which yields $1,785 in net current assets. Counsel also submitted copies of bank statements as the Service Center had previously requested.

The petitioner is required to demonstrate, with clear and convincing evidence, its eligibility for the benefit sought. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

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[5] Although the decision also implies that the director found the petitioner had failed to demonstrate some other aspect of its eligibility, it does not specifically state what that other aspect is. This office shall not, therefore, base its decision on the other ground to which the decision alludes.

[6] The Form ETA 750, Part B, Item 15, requires the beneficiary to "List all jobs held during the last three (3) years."

The director questioned the veracity of the petitioner's evidence because it contained various inconsistencies and contradictions. Rather than providing independent objective evidence in support of his documentation, the petitioner's owner attempts to reform his evidence by providing explanations. That is insufficient. The petitioner's evidence, including its evidence of amounts paid to the beneficiary, has been impeached and has not been reformed. It has, therefore, insufficient evidentiary value to demonstrate that the petitioner is able to pay the proffered wage and is otherwise eligible for the benefit sought. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.